

# ALERT

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## ‘Job Killer’ Bills Meeting Mixed Fates in Final Days



With less than two weeks remaining before the scheduled end of the legislative year, numerous “job killer” proposals are still moving through the process.

The Senate and Assembly Appropriations committees met last week to consider long lists of legislation. September 11 is the last day for each house to pass legislation for consideration by Governor Arnold Schwarzenegger.

### In Senate

As *Alert* went to press, the following “job killers” awaited action by the Senate:

● **AB 5 (Wolk; D-Davis) Housing Development Restrictions.** Stops new housing development in the Central Valley by punishing new development for the failure of local agencies to develop flood control plans which are based on information not available until 2011.

● **AB 8 (Núñez; D-Los Angeles) Health Care Tax on Employers.** Imposes a tax on small employers who can’t afford to provide health care coverage, to fund health care coverage for those who don’t currently purchase it.

● **AB 35 (Ruskin; D-Redwood City) Increased Construction Costs.** Increases cost to businesses by shifting the development of “green building” standards for

*See ‘Job Killer’: Page 7*

## Bill Ending Farmworker Union Elections Heads to Governor



California Chamber of Commerce-**opposed** legislation that hurts the competitiveness of California agriculture producers and sends the wrong message to California

businesses has passed the Legislature and now awaits action by the Governor.

**SB 180 (Migden; D-San Francisco)** will drive businesses out of state, kill jobs and increase the loss of farmland by artificially increasing labor costs for California producers who must compete in a global market with lower-than-average operating costs. The bill removes the secret ballot election requirement for union representation and prohibits employer communication with employees.

SB 180 proposes to take away a worker’s right to a private ballot when deciding whether to join a union by replacing the private ballot with a “card check” process, which allows a union to organize if a majority of workers simply sign a card. Under this system, the union organizers themselves oversee the process, and the workers’ votes are made public to the employer, the union organizers and co-workers.

In opposing the bill, the CalChamber pointed out that workers are better pro-

*See Bill: Page 3*

## CalChamber Hosts Korean, German Officials



Luncheons hosted by the California Chamber of Commerce provide opportunities for attendees to hear from His Excellency Lee Tae-sik (left), Korean ambassador to the United States, and the Honorable Frank-Walter Steinmeier, minister for foreign affairs of the Federal Republic of Germany. See stories on Pages 4-5.

### Inside

CalChamber Urges Revise of Meal/Rest Rules: Page 3

## Labor Law Corner

# Rescinding Offer of Employment Could Penalize Employer



**Jessica Hawthorne**  
Employment Law  
Counsel

*We have made an offer of employment to an applicant and now find that we do not really need to fill this position. What are the risks of rescinding an offer of employment at this stage? Would the response be different if the individual was already working for us?*

Depending on the circumstances, there

may be a lot of risk involved in rescinding a job offer to someone who has accepted and already given notice to a current employer.

### Before Making an Offer

It is wise to confirm with all concerned — supervisors, managers, anyone who must approve the offer — before making an offer of employment.

You should also make offers in writing, with a statement of employment at-will and any contingencies upon which the offer depends, such as successful completion of pre-employment physical, drug screen, reference, credit or background check.

In either of these examples, if you induced the employee to move to, from or within California by misrepresenting the nature, length or physical conditions of employment, then you would be exposed to liability double the amount of any cost

incurred by the employee taking the job with your company. These costs include moving expenses, purchase of a new home and loss of wages.

### Employer Penalties

If this employee can demonstrate that you made promises you did not keep, such as term of employment or job duties, then you could be exposed to penalties under the fraudulent inducement provisions of California law, as well as wrongful termination.

If the applicant or employee quit his/her current position in order to accept yours and cannot rescind the resignation or find another equivalent job, the potential future damages — loss of salary, benefits, etc. — will be greater. You may be liable for these future damages as well as the other costs listed above that the individual incurred in accepting the job with your organization.

All supervisors and managers should be trained as to appropriate interviewing questions and techniques and information to be given to applicants. The use of interviewing guidelines and consistent information about the position will help eliminate the possibility of misrepresentation about the job and/or the company.

*The Labor Law Helpline is a service to California Chamber of Commerce preferred and executive members. For expert explanations of labor laws and Cal/OSHA regulations, not legal counsel for specific situations, call (800) 348-2262 or submit your question at [www.hrcalifornia.com](http://www.hrcalifornia.com).*

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## CalChamber Calendar

*International Luncheon Forum with  
Mexican Ambassador Arturo  
Sarukhan: September 12, Sacramento*

## Seminars/Trade Shows

For more information on the seminars listed below, visit [www.calchamber.com/events](http://www.calchamber.com/events).

### Business Resources

Looking Good on Paper. Wilcox Miller & Nelson. Sacramento, September 11. (916) 977-3700.

Free Nonprofit Tax Seminar. California State Board of Equalization. Sacramento, September 13. (916) 445-1832.

**Next Alert:  
September 21**

Tracking Hours and Breaks

Learn More at [HRCalifornia.com](http://HRCalifornia.com)



# CalChamber Urges State to Revisit Rules for Meal/Rest Periods to Enhance Flexibility



The California Chamber of Commerce is urging the state to revise how it interprets and enforces meal and rest period requirements to allow for maximum flexibility that benefits both employers and employees.

The CalChamber led a coalition of employers in presenting to the state Division of Labor Standards Enforcement (DLSE) written comments highlighting needed changes in the rules.

The CalChamber also presented testimony emphasizing the need for greater flexibility in enforcement of the meal and rest period rules at two public hearings in August with the state labor commissioner.

## Current Confusion

“Current law on meal and rest periods is confusing and self-contradictory, exposing employers to indefinite and often unjustified risks for litigation,” said CalChamber policy advocate Marti Fisher. “What’s more, the law and the state’s interpretation of it provides employers

and employees alike no meaningful ability to maturely manage how employees eat and rest during their work day.”

An April ruling by the California Supreme Court in *Murphy v. Kenneth Cole Productions, Inc.* said the amount an employer pays a worker for failing to provide the worker a meal break is a wage, not a penalty.

As a result, employees now have more time — three years — to sue over an alleged violation of the requirement that employers provide a meal or rest break. The employer’s liability is thereby increased.

The impact of the case is enormous due to the number of pending lawsuits in California on the issue.

## Changes Needed

The CalChamber and employers coalition urged the DLSE to revise its interpretation and enforcement policies regarding an employer’s duty to provide employees with rest and meal periods to make it clear that:

- An employer must provide employees with a genuine opportunity to take

rest periods and meal periods, but need not force employees to take them.

- Where an employer has provided an employee with an opportunity to take a rest or meal period, the employee, with the employer’s permission, may choose to forgo all or part of the provided rest and meal period and/or to stop working and rest or have a meal period at some other times.

- On-duty meal periods are allowed in more situations than under the DLSE’s current interpretation and policy, recognizing the realities of various workplaces.

- Time off between split shifts satisfies an employer’s duty to provide an employee with a meal period.

- Only one meal period must be provided to an employee employed for a work period of no more than 10 hours in a day.

August 31 was the deadline for submitting written comments to the DLSE. The CalChamber and employer coalition are hopeful that the DLSE will move forward in a timely manner with the recommendations of the coalition.

**Staff Contact: Marti Fisher**

## Bill Ending Union Elections for Farmworkers Heads to Governor

*From Page 1*

tected from interference and intimidation by casting their vote privately with a secret ballot. Taking away employees’ access to that process is undemocratic.

Labor unions in California are experiencing a decline in membership. Bolstering their membership should occur because workers see a need, not by adulterating the election process.

The CalChamber and the California Employer Coalition support the Agricultural Labor Relations Act and reject attempts to undermine the secret ballot process in California in any way. Undermining the secret ballot process sends the wrong message to new/growing businesses that could create jobs for Californians.

## Key Vote

The Senate voted 23-14 to concur

in Assembly amendments to SB 180, sending the bill to Governor Arnold Schwarzenegger.

Ayes: Alquist (D-Santa Clara), Calderon (D-Montebello), Cedillo (D-Los Angeles), Corbett (D-San Leandro), Correa (D-Santa Ana), Ducheny (D-San Diego), Florez (D-Shafter), Kehoe (D-San Diego), Kuehl (D-Santa Monica), Lowenthal (D-Long Beach), Machado (D-Linden), Migden (D-San Francisco), Negrete McLeod (D-Chino), Padilla (D-Pacoima), Perata (D-Oakland), Ridley-Thomas (D-Los Angeles), Romero (D-Los Angeles), Scott (D-Pasadena), Simitian (D-Palo Alto), Steinberg (D-Sacramento), Torlakson (D-Antioch), Wiggins (D-Santa Rosa), Yee (D-San Francisco).

Noes: Aanestad (R-Grass Valley), Ackerman (R-Tustin), Ashburn (R-Bakersfield), Battin (R-La Quinta),

Cogdill (R-Modesto), Cox (R-Fair Oaks), Denham (R-Merced), Harman (R-Huntington Beach), Hollingsworth (R-Murrieta), Maldonado (R-Santa Maria), Margett (R-Arcadia), McClintock (R-Thousand Oaks), Runner (R-Lancaster), Wyland (R-Del Mar).

Absent/abstaining/not voting: Dutton (R-Rancho Cucamonga), Oropeza (D-Long Beach), Vincent (D-Inglewood).

## Action Needed

The CalChamber is strongly urging employers to send Governor Schwarzenegger a letter asking that he **veto SB 180**. For a sample letter, visit [www.calchambervotes.com](http://www.calchambervotes.com).

**Staff Contact: Marti Fisher**

# Korean Ambassador Urges Support for U.S.-Korea Free Trade Agreement

His Excellency Lee Tae-sik, Korean Ambassador to the United States, enumerated the benefits of the U.S.-Korea Free Trade Agreement (FTA) at an international luncheon forum hosted by the California Chamber of Commerce on August 28.

Approval of the FTA is pending before Congress. Korea is California's fifth largest exporting partner, and in 2006 California exported \$7 billion worth of goods to Korea.

"We have a historic opportunity to create the third largest free trade area in the world after the European Union and the North American Free Trade Agreement," Ambassador Lee said. "This is a far-reaching and comprehensive free trade agreement covering all aspects of our two nations' economic relationship."

## Increased Trade

The U.S.-Korea FTA will lower tariffs and foster increased trade between both countries as a critical element of the U.S. strategy to liberalize trade through multilateral, regional and bilateral initiatives.

"Our two nations' economies are increasingly compatible and intertwined," Lee said. "Last year, Korea and the United States took the ambitious steps of pursuing a free trade agreement, and after more than one year of intense negotiations, this past June, the landmark agreement was officially signed."

In 2006, two-way trade between the two countries topped \$78 billion. The FTA will increase U.S. exports to Korea by 54 percent and Korean imports to the United States by 21 percent, according to a report by the International Trade Commission.

Korea is the seventh largest U.S. export market in the world and the sixth largest market for farm exports. In 2006, U.S. exports to Korea reached \$43 billion, with U.S. small and medium-sized companies accounting for a third of this total.

The United States should not miss this opportunity to advance into the Korean market, Lee explained. "For Korea, this FTA will provide U.S. businesses with a strategic springboard to strengthen their positions among the other dynamic econ-



His Excellency Lee Tae-sik, Korean Ambassador to the United States, accepts a gift from California Chamber of Commerce President Allan Zaremberg following remarks at a CalChamber International Luncheon Forum on August 28.

omies of Northeast Asia," he said.

## Duty-Free Exports

The U.S.-Korea FTA would grant unprecedented access to the South Korean market. Under the FTA, nearly 95 percent of bilateral trade in consumer and industrial products becomes duty-free within three years of the FTA's entry into force, including key U.S. exports such as electronic machinery and parts, auto parts, power generation equipment, most chemicals, and medical and scientific equipment.

U.S. farmers and ranchers would benefit from the fact that more than half of current U.S. farm exports to South Korea will become duty-free immediately, including high-value agricultural products such as almonds, pistachios, wine and cherries. For many other key agricultural goods, such as pork and citrus products, the FTA will provide unparalleled access to the South Korean market and its prosperous consumer base.

## Korean Investment

Along with trade, investment between the two countries is flourishing and is becoming increasingly two-way.

For U.S. investors operating in South Korea, the FTA establishes a stable legal framework that will protect all forms of

investment. Under nearly all circumstances, U.S. investors will enjoy the right to establish, acquire and operate investments in South Korea on equal footing with local investors, and investor protections will be backed by a transparent, binding international arbitration mechanism.

From an economic standpoint, the potential benefits of the U.S.-Korea FTA to U.S. workers, farmers, manufacturers and service suppliers are undeniable.

"The relationship between our two countries is very special. This free trade agreement is very comprehensive," Lee said. "The agreement covers the full range of trade-related areas, from goods and services to intellectual property rights, competition, labor and the environment. The United States should not miss this opportunity to advance into the Korean market before others."

## CalChamber Position

The CalChamber, in keeping with long-standing policy, enthusiastically supports free trade worldwide, expansion of international trade and investment, fair and equitable market access for California products abroad and elimination of disincentives that impede the international competitiveness of California business.

**Staff Contact: Susanne Stirling**

## CalChamber Discusses Climate, Energy with German Minister for Foreign Affairs

The California Chamber of Commerce hosted the Honorable Frank-Walter Steinmeier, Minister for Foreign Affairs of Germany, at an international luncheon last week to discuss climate and energy policy.

More than 80 guests attended the working luncheon on August 30 and greeted Minister Steinmeier. Among the attendees were California and German government officials and business people from California and Germany, including representatives of transportation, manufacturing and technology.

### Article

Minister Steinmeier is the first German foreign minister to travel to California in more than 50 years. Luncheon conversations revolved around a recent article by Minister Steinmeier that addressed the need for cooperation between all nations to combat climate changes.

“We need to increase international cooperation, deepen existing partnerships and forge new global climate and energy alliances,” he wrote.

Steinmeier recognizes that California is a political and economic heavyweight in the United States and a trailblazer in environmental and climate protection, calling the state “a key partner” in pursuing a global market for CO2 trading.

“We must seize this opportunity and coordinate our policy more closely with California and all other willing U.S. states so as to create a transatlantic trade in CO2,” he wrote.

### Support for Climate, Economy

The CalChamber will work to



The Honorable Frank-Walter Steinmeier (center), Minister for Foreign Affairs of Germany, chats with Lieutenant Governor John Garamendi (left) and California Chamber of Commerce President Allan Zaremberg after the August 30 CalChamber-hosted International Luncheon Forum for a delegation of German government officials, business and science representatives headed by the Minister.

minimize the compliance costs associated with climate change by actively pushing for measures that effectively reduce carbon while allowing for continued economic growth.

The CalChamber believes that to be a true leader on this issue, the state needs to share its proven energy efficiency knowledge while harnessing the innovation and creativity of its citizens to pioneer new, low-carbon technologies. In fact, policy approaches that recognize and encourage California’s leadership and innovation in the environmental arena can be more effective than taxes or fees. Successful technologies developed in California and implemented throughout the world could provide a win-win for

California businesses, both by helping to reduce greenhouse gas emissions here and in other nations, and providing jobs in the state.

### Exports

The top four major items of export from California to Germany are: computers and electronic products, manufactured goods, transportation equipment, and chemicals. Computers and electronic products contributed to more than 44 percent of the total Californian exports to Germany. California exports of these items grew from \$ 4.2 billion in 2005 to \$4.5 billion in 2006.

Staff Contact: Susanne Stirling

Mark Your  
Calendars

California Business Legislative Summit  
May 20-21, 2008

## CalChamber Emphasizes Need for Properly Designed Forestry Protocols

The California Chamber of Commerce supports the adoption of properly designed greenhouse gas (GHG) emissions protocols for the forestry sector, which can serve as a valuable tool in California's efforts to achieve GHG reductions in a cost-effective and efficient manner.

### Forests and Climate Change

In September 2006, Governor Arnold Schwarzenegger signed into law AB 32 (Núñez; D-Los Angeles), the California Global Warming Solutions Act, which included specific goals for reducing GHG emissions to 1990 levels by 2020.

California's vibrant, sustainable and well-managed working forests, owned by hundreds of individuals, families and companies, are perfectly suited to play an important role in helping the state achieve the Governor's ambitious goals.

Responsibly managed forestlands offer great potential to significantly reduce GHG emissions by absorbing carbon dioxide, reducing wildfire risk and produc-

ing clean energy. The process of absorbing carbon dioxide is a natural byproduct of tree growth, and wood products can continue to store that carbon for hundreds of years.

### Concerns Over Protocols

The California Air Resources Board (ARB) staff will be holding a public meeting on September 6 to discuss proposed forestry protocols and how they could be used to encourage voluntary greenhouse gas reductions.

The CalChamber has several concerns over the protocols being considered:

- Among other restrictions, the proposed protocols mandate permanent land-conservation easements on forestland owners who are willing to risk participation in a market-based carbon trading system that has yet to be defined.

- Limitations on forest improvement activities that qualify for trading as well as the complex and costly annual audit provisions, make the proposed protocols

unlikely to attract participants.

- The unintended consequence of adopting these protocols could prevent the potential removal of 10 million tons of carbon dioxide per year from California's air.

- The proposed protocols conflict with basic market-based carbon trading principles that call for the use of good data, innovation and a cost-effective framework, as well as mechanisms to ensure carbon emissions are not just transferred to other states or nations.

### CalChamber Recommendation

The CalChamber recommends that the ARB work with California's forestland owners to develop protocols that recognize these market principles and the value of responsibly managed forests, including the significant contribution they can make in achieving the state's ambitious GHG reduction goals.

**Staff Contact: Robert Callahan**

## CalBizCentral™ Makes Spanish Federal Minimum Wage Poster Available

The Spanish version of the new federal minimum wage poster has been approved by the federal government and is available for members to download free from CalBizCentral™, the source for California business and human resource compliance products, presented by the California Chamber of Commerce.

In January 2007, Congress passed and President George W. Bush subsequently signed a bill increasing the federal minimum wage from \$5.15 to \$7.25 an

hour over the next two years.

Even with this increase, the federal minimum wage still is less than California's. California employers need to continue paying employees at least the California minimum wage of \$7.50 per hour for the remainder of 2007 and \$8 per hour beginning January 1, 2008.

Although the deadline to post the new federal minimum wage poster was July 24, the Spanish version of the poster was not approved until recently. To be in com-

pliance with the new law, businesses need only to download and print the poster and post it next to their 2007 *California and Federal Employment Poster*.

There are no citations or penalties for failure to post the federal minimum wage poster. However, there is a legal requirement to post the new federal minimum wage poster now that the law has gone into effect.

**They won't know unless you tell them. Write your legislator.**

**calchambervotes.com**

## ‘Job Killer’ Bills Meeting Mixed Fates in Final Days



*From Page 1*

government buildings from the Building Standards Commission, which considers cost impact in its development of standards, to other state entities, which do not consider cost impact and have no experience in the development or adoption of building standards.

- **AB 70 (Jones; D-Sacramento) Housing Development Restrictions.** Halts development of housing by imposing joint liability on cities and counties for any flood damage, if they permit housing in undeveloped areas.

- **AB 338 (Coto; D-San Jose) Roll Back of Cost-Saving Workers’ Compensation Reforms.** Undermines workers’ compensation reforms and increases temporary disability costs in workers’ compensation claims by increasing the number of weeks benefits can be paid, and by creating a disincentive to use utilization review to enforce medical treatment guidelines.

- **AB 437 (Jones; D-Sacramento) Increased Employer Liability Exposure.** Greatly expands employers’ liability exposure and hampers their ability to defend themselves by effectively removing any statute of limitations for lawsuits challenging any employer decision that affects pay or benefits.

- **AB 888 (Lieu; D-Torrance) Increased Construction Costs.** Increases cost to businesses by shifting the development of “green building” standards for commercial buildings from the Building Standards Commission, which considers cost impact in its development of standards, to other state entities, which do not consider cost impact and have no experience in the development or adoption of building standards.

- **AB 1058 (Laird; D-Santa Cruz) Increased Construction Costs.** Increases cost to businesses by shifting the development of “green building” standards for residential buildings from the Building Standards Commission, which considers cost impact in its development of standards, to other state entities, which do not consider cost impact and have no experience in the development or adoption of building standards.

### In Assembly

Awaiting action by the full Assembly are the following “job killers”:

- **SB 140 (Kehoe; D-Chino) New Fuel Mandate.** Disadvantages California businesses and increases fuel prices by creating a fuel mandate that picks a winner in the alternative fuels market, preventing the research and development of additional viable options that may be cheaper and more efficient.

- **SB 210 (Kehoe; D-Chino) Restrictive Fuel Standard.** Interferes with the development of a competitive alternative fuels market and threatens job creation in California by creating a costly Low Carbon Fuel Standard that conflicts with the existing standard created by Governor’s Executive Order S-7-04.

- **SB 622 (Padilla; D-Pacoima) Independent Contractors.** Creates a new excuse to sue employers and exposes them to excessive new penalties for “willful misclassification” of independent contractors without providing clear compliance guidelines.

- **SB 942 (Migden; D-San Francisco) Increased Workers’ Compensation Costs.** Increases lawsuits against employers by expanding anti-discrimination laws related to workers’ compensation claims and creating a legal presumption that an employer has discriminated.

- **SB 974 (Lowenthal; D-Long Beach) Tax on Freight Movement.** Increases the cost of shipping goods and makes California less competitive by imposing an illegal per-container tax in the ports of Long Beach, Los Angeles and Oakland.

- **AB 504 (Swanson; D-Alameda) Mandatory Payments for Striking Employees.** Forces employers to pay striking employees by creating a new definition of lockout that requires an employer to pay restitution to employees. (Awaiting concurrence in Senate amendments.)

### To Governor

The following “job killer” passed the Senate and was sent to the Governor on August 27. He has 30 days to sign or veto it (see story on Page 1).

- **SB 180 (Migden; D-San Fran-**

- cisco) Increased Agricultural Costs.** Hurts competitiveness of California agriculture producers, driving businesses out of state, killing jobs and increasing loss of farmland, by artificially increasing labor costs for California producers who must compete in a global market with lower-than-average operating costs; removes secret ballot election requirement for union representation and prohibits employer communication with employees.

### Not Moving

The following bills passed the house in which they were introduced, but have been delayed in the second house to consider them:

- **AB 1554 (Jones; D-Sacramento) New Government Bureaucracy for Rate Regulation.** Reduces health care choice, access and quality by creating additional bureaucracy to impose price controls on health care policies, while failing to address the major cost drivers of rising medical care costs. Held in Senate Health Committee.

- **SB 375 (Steinberg; D-Sacramento) Growth Restrictions.** Limits increased transportation capacity and affordable housing, and thwarts intent of voters who approved broad-based transportation bonds, by blocking use of these funds except for narrowly defined “infill” development projects. Held on the Assembly Appropriations Suspense file.

- **SB 840 (Kuehl; D-Santa Monica) Government-Run Health Care.** Creates new government-run, multibillion-dollar socialized health care system built from a yet-to-be-specified tax increase. Not taken up in Assembly Appropriations.

### Action Needed

Contact your representatives in the Senate and Assembly and urge them to **oppose** the “job killer” bills that are still moving.

For sample letters and more information, visit [www.calchambervotes.com](http://www.calchambervotes.com).

**Staff Contact: Dominic DiMare**

## Stay on top of non-exempt employee wage and hour laws so you avoid being buried by penalties.

**Meal & Rest Periods — Avoiding Penalties Live Web Seminar** provides an in-depth review of the requirements of wage and hour laws and how they apply to non-exempt employees. This 90-minute event is ideal for anyone who manages employees and wants clarification on agency regulations and case law that dictate the penalties for improperly handling non-exempt employee meal and rest periods. We cover:

- Explanation of Kenneth Cole case, specifically meal and rest periods;
- Administration of proper payment without documentation;
- Differentiating between reporting time, on-call pay, travel and training time;
- Properly handling overpayment and deductions from wages;
- Understanding the agency regulations and how to protect your company.

**Meal & Rest Periods — Avoiding Penalties Live Web Seminar**

Thursday,  
September 20  
10 a.m. (PST)  
90 minutes  
Registration starts at \$120

To register, visit [www.calbizcentral.com/nonexempt](http://www.calbizcentral.com/nonexempt) or call (800) 331-8877.



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